



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

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CONSERVATION COMMISSION MEETING MINUTES September 27, 2007 Beginning at 7:30 p.m. Room 209, City Hall

MEMBERS PRESENT: I. Wallach, Chair, R. Matthews, S. Lunin, N. Richardson; Associates: J. Hepburn

MEMBERS ABSENT: D. Dickson, R. Freed, A. Green, Associate: D. Green

MEMBERS OF THE PUBLIC: See attached sign-in sheet.

Charles River Water Chestnut harvesting – NOI for Charles River Lakes Region Water Chestnut harvesting –and COC for expired DCR-file #239-295

Planner's Report: Jim Straub will be reporting on water chestnut harvesting methods for this year's harvesting, including disposal. Notice of Intent: I have several concerns I have asked the applicant to address: 1) Sediment will be disturbed by this work – either provide specific information to support it will have minimal/no effect on FW fish spawning, etc., or provide specific information for why water chestnuts are so bad that the benefit from harvesting outweighs harm to fish; 2) Has Fish & Wildlife been notified - provide comment letter; 3) Is harvester launched from Newton, and if so, provide details – address of access point, what actions will be taken/were taken in past to reduce impact to bank;

Meeting: Staff reported that no file number has yet been issued by Department of Environmental Protection and applicant has requested a continuance until the next meeting. **Motion** by R. Matthews to continue hearing. Seconded by N. Richardson. **Vote:** All in favor. **Motion carried.** Hearing continued until October 25th.

Lesya Sturz – reporting on CRs and what needs to be done to ensure these are valid.

Meeting: Ms. Sturz reported on her research into the history and process of recording conservation restrictions, and reviewed the file on Newton's CRs and compared available materials with those recommended in the Stewardship Handbook. She reported that many of the CRs, and especially the oldest ones lacked important materials. Recommendations for materials that should be filed with CRs include:

- Provide guidelines to owners who would record CRs
- A fund should be established for upkeep on the property & someone must keep track of the fund
- There should be permanent markers on the property to delineate the CR
- Every CR should have a baseline report, including photos
- The Commission should work with the Newton Conservators to set up annual visits to each CR property

Conservation Commission

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- W should combine City of Newton & Legal Dept. records
- There should be archival copies
- Each file should include a detailed survey map for reference
- GIS maps should include these and subsequent state maps

Conclusion: There are at least 3 folders as complete as can be for information available, but there are about 20 CRs. Ms. Sturz prepared templates for each CR to try to complete the information needed to document it. The Commission requested staff send a letter of thanks to Ms. Sturz for her work on this project.

450 Beacon Street –RDA for addition in possible riverfront, and floodplain.

Planner's Report: Owner proposes addition of foundation for two rooms mostly within 200 ft from bank of Hammond Brook. This stream is identified in the Newton GIS layers as perennial w/200 ft riverfront and recent filing in 2004 of house next door at 440 also identified stream as perennial. Owner asks Commission to determine resource(s) and whether work is subject to the Act. Channel for stream (identified as Hammond Stream) runs parallel to Beacon St (east and west) approximately along the rear property line and its bank was located by survey methods, with the 100 ft buffer to bank shown on the plan. During a site visit the stream was dry, and owners say it seldom has water. Photos were submitted by the applicant for days that the stream was dry. A pipe to west appears to be plugged and a manhole to east shows a small amount of water at bottom. Engineering can find no records that stream was piped or diverted at this location. It is possible this is a run-off channel which produces an intermittent stream only during rainfall. I requested the owners supply soil logs and an estimate of the watershed area. Owners propose addition of two new rooms, the closest of which is 139 ft from the top of bank (all proposed work is within 200 ft of top of bank).

Meeting: Russell Waldron of Applied Ecological Sciences represented owners Katherine Chan and Kenneth Leung. Mr. Waldron has observed the channel and submitted photographs to document the streambed behind 450 Beacon Street has been dry four or more days this year, submitted soil logs indicating the channel bottom is not a wetland soil, and submitted a topographic map estimating the watershed area (1/2 acre) for this section of the stream. Anne explained that she and Engineering have been trying to investigate the issue of whether there are any dams, diversions or withdrawals that significantly affect stream flow at this address. The record is still incomplete. A rock dam at Houghton Garden appears to block further westerly flow, and a section of the stream further west (just east of Cloveley) is shown as being piped, on engineering plans. Plans in Engineering show the stream southwest of Old England Road as surface flow and perennial behind 450 Beacon. Staff recommended, with the information available, the Commission make a determination that the stream at this site is intermittent. **Motion** by R. Matthews that the stream is intermittent only at 450 Beacon Street was **seconded** by N. Richards. Discussion followed. N. Richards is concerned that we caused this, and that we do not have all the information we need for a determination. **Vote:** All in favor. **Motion carried.** **Motion** by R. Matthews for a negative determination on both the resource area and the work. **Seconded** by N. Richards. **Vote:** All in favor. **Motion carried.**

76 Webster –RDA for construction of two dwellings in the 100 ft buffer to bordering vegetated wetland

Planner's Report: Owner had Determination of Applicability to allow work with erosion and sediment control, but DOA lapsed (this summer). Same plans have been re-submitted, tree removal done without erosion and sediment control, but it has been installed now (silt fence and filter sox). All proposed work (including tree removal) is more than 50 ft from BFW, but there is a steep slope. Conservation easement between slope and work will not be recorded until all work done. Recommend positive determination on resource area, negative determination on work, with approved erosion & sediment control.

Meeting: Lark Palermo, CEO and Director, and Jonathan Wye, Construction Manager of Habitat for Humanity, Greater Boston attended and presented. Ms. Palermo said the previous Determination of Applicability had expired while Habitat raised money for the proposed work (to build low-income housing), and that neither the conditions nor the plans had changed. When the project is completed, 1/3 of the property will be given to the City of Newton for conservation. The Conservation Restriction has been recorded, and there will be impacts during construction. **Motion** by R. Matthews to issue a negative determination on the work,

provided that erosion and sediment control is maintained. **Seconded** by N. Richardson. I. Wallach asked to amend to include condition that Habitat restore the area under the Conservation Restriction when the houses are completed. **Vote:** All in favor of motion, as amended. **Motion carried.**

56 Farwell – NOI – remove fill in riverfront and flood zone & trim trees

Planner's Report: Staff received complaint from DEP of fill in riverfront (near Charles River bank), bordering vegetated wetland and/or buffer zone. At site visit staff found a man with a pick-up on site shoveling dirt into piles at the back of property near bank of Charles. Staff advised him to stop, but he appeared not to speak English and staff could not get a name. Owner says the dirt was dumped without his permission. Erosion and sediment control was put into place between piles of fill and bank, and both owners are willing to remove fill and re-seed area between house and river. NOI requests tree-trimming. Since "vista pruning" is considered an exempt activity only if no work is performed closer than 50 ft to bank (MHW), and most trees on the property (& their limbs) are within 50 ft of the bank, this is not vista pruning, and not exempt. No pruning plan has been submitted to date.

Meeting: N. Richardson raised concerns about the hemlock trees on the site, and what will happen to them during construction. Mr. Wye said they were infested with wooly adelgid moths. Staff suggested soil compaction might be a problem, and mention was made that the Tree Warden/City Arborist had previously suggested using thick mulch around the trees during construction. Staff will consult with the Arborist and communicate with Jonathan Nye. **Motion** by R. Mathews to issue negative determination on the work. **Second** by N. Richardson. **Vote:** All in favor. **Motion carried.**

21 Kingswood – Request for Administrative Change.

Planner's Report: Owner is reducing amount of driveway (impervious area) from 632 sf to 490.4 sf – asks for reduction in planted area from 1007 sf to 781 sf (est. same ratio of 1.6); owner also asks to maintain existing 4 ft wide bank access to Charles R. for canoe launch. Recommend approve with 1) Modified plan to show all proposed changes: a) reduction in driveway (shown), b) planting area & species, and c) boat launch area. Recommend the Commission allow administrative substitution of plan dated April 30, 2007, final revised date September 14, 2007.

Meeting: Discussion ensued about what is changing, including addition of concrete pads for air conditioners, and how to do administrative change. Discussion continued about bank access for canoe launch. – owner stated there is four-foot wide shrub-free area where the canoe is launched, and they want to maintain this access by continuing to trim shrubs. **Motion** by R. Mathews to allow administrative change. **Seconded** by S. Lunin (?). Discussion ensued regarding difference between administrative change and Amended NOI. Staff noted that abutters would need to be re-notified and a legal notice of the request for an Amended Order would need to be published. I. Wallach suggested continuance to next meeting to allow owner to bring in new plan to October 25th meeting that shows all the changes, and that the revised plan will have to be recorded at the Registry. Owner agrees. **Vote:** All in favor. **Motion carried.**

68 Brierfield Rd – NOI for excavation in flood zone and installation of drainage.

Planner's Report: – Maxine Alchek – owner excavated back yard in conjunction with (permitted) work on addition in flood zone. Letter sent by staff to cease work (since signs that dirt getting into storm drains that empty into a nearby piped stream) and file for work in flood zone. Drainage plan under review by engineering.

Meeting: Joe Porter of VTP represented owner (who was also present). He reported that Ms. Alchek's contractor began the work and found water damage around the base of the house. The contractor started excavating to put in drainage system, then learned from ISD that the house is in a flood zone. Mrs. Milstein, an abutter, submitted a comment letter and spoke at the hearing. She is concerned that the drainage system and re-grading will cause water to enter her house. Mr. Porter said the drainage system will not affect her house

because Mrs. Milstein's house sits at a higher elevation and because the proposed drainage system will send overflow to the south, rather than to the east toward Mrs. Milstein's house. New plan submitted dated September 24, 2007. Approximate 108 cu yds of soil have been/will be removed to install a drainage system and lower the elevation to create more "holding capacity" further away from the house. A perc test was completed and the engineer advised putting silt sacs under storm drains in vicinity to prevent silt from entering nearby piped stream. **Motion** by R. Mathews to issue Order of Conditions with engineer's recommendation incorporated. **Second** by N. Richardson. **Vote:** All in favor. **Motion carried.**

63 Beethoven Rd – NOI for demolition and re-build of house in buffer to bank

Planner's Report: Un-named intermittent stream along the property boundary at the back of the house. The 100 ft buffer to the bank runs approximately through the middle of the existing house and encompasses virtually all of the proposed house, which will be twice as big as the existing house. The low point is in the SW corner of the [back] yard, but otherwise there is a berm between the bank of the stream and the yard, so that erosion and sediment control need not be continuous across the back of the yard. First plan shows perc test, but it is too far from proposed drainage installation. New plan submitted

Meeting: Sean Leary (builder) presented. No file number yet. Stream is dry. Mr. Leary agrees to submit planting plan to be approved by staff prior to start of construction. **Motion** by R. Mathews to issue Order of Conditions with engineer's recommendation incorporated, and providing get DEP file number with no negative comments. **Second** by N. Richardson. **Vote:** All in favor. Motion carried

Violations – Reports & Actions

42 Selwyn – Mayor's office received complaint of cutting vegetation on sides of streambed and allowing it to block stream. Staff observed that hostas and daylilies had been planted on the bank of the stream behind 42 Selwyn. Owner(s) Andrew McAfee and Jill Hahn were contacted by letter. Owner called office and indicated she would attend the ConCom meeting in July but did not appear. A second letter was sent to owner. So far owner has not responded.

Meeting: Staff received letter indicating owner would not be able to attend the September meeting, either. The Commission directed a letter be sent to homeowner to do no further work (cutting or planting) unless she gets permission from the Commission.

21-23 Cross St – I received complaint that storage building was constructed on property with no filing. I visited site on 7-31-07 with inspector from ISD – no building permit. Shed constructed in riverfront and flood zone. The shed is on pilings, but is less than 100 ft from Cheesecake Brook and requires building permits. ISD does not believe it will meet set-back requirements. ISD issued stop work order. I issued Violation Letter and required owner to file for this meeting. Owner has not filed, but says he has contacted an engineer.

Meeting: Antonio DeSantis, owner, appeared and told the Commission he has hired an engineer (Joe Porter) and will file for the October meeting.

160 Pine St – Gazebo Condos has, at some time since its Certificate of Compliance, built a large retaining wall (using railroad ties), and filled behind it. This is sitting atop a city sewer easement and sewer manhole that DPW needs to access urgently to scope for a blockage. After the first letter, Michael Connolly, condo manager, said he would contact me to schedule a meeting, but he did not. A second letter was sent and a meeting scheduled for 9-20.

Meeting: Owner (condominium manager) is cooperating and will file soon for work on bank/within 100 ft of bank of Brunnen Brook.

93 Andrew St – ISD site visit found owner out of compliance with his building permit and with his OOC. He is not quite in compliance with his OOC (no planting plan submitted or approved, and plantings were to be done by summer 07; no dry well, and extra steps in front). I am working with the consultant and owner to get him back into compliance.

Meeting: Staff reported that owner Karim Favakeh is working to come into compliance.

35 Kingswood Rd - Owner altered (rip-rapped) bank of Charles R. He removed rip-rap and planted blueberry and non-native Japanese barberry as mitigation. He was required to remove the barberry and March 23, 2007, Martha accepted his plan to plant approximately 20 bearberry. I called owner to check on progress. He said the bearberry died so he planted strawberries. I visited the site with owner, who has asked the Commission to consider the violation resolved. I advised owner that herbaceous vegetation (strawberries) will not stabilize the bank as well, nor provide as good a buffer zone to nutrient run-off from the lawn.

Meeting: Staff reported than Mr. Ed Englander, owner, will not be able to attend this meeting. Commission called for blueberries or other native indigenous woody vegetation to replace failed bearberry plantings.

15 Harwich – While I was visiting conservation land at end of Harwich with John Menard, I observed construction work (backhoe in operation) at 15 Harwich with no erosion and sediment control in place. The site is adjacent to conservation land and within the 100 ft buffer to bordering vegetated wetland. Past EO and many letters exchanged with owner regarding cutting on conservation land. Discussion by the Commission – owner should file with the Commission or otherwise come into compliance with the Wetlands Protection Act. Recommend owner should provide engineered plan with delineation by wetland scientist and showing drainage and other work as part of Notice of Intent.

Meeting: Following discussion of whether the Commission could get an injunction, whether the applicant needed to file a Notice of Intent, and other strategies to obtain review of the project, the Commission directed staff to consult with the Law Department and DEP and follow whatever strategy seemed most likely to obtain compliance by the owner, Ralph Feinberg, with the Wetlands Protection Act.

Certificates of Compliance

107 Pine St, DEP NE#239-338

Meeting: Staff reported that special condition calling for recorded deed restrictions and maintenance of drainage structures had not been satisfied.

Finding: Commission determined that Order of Conditions has not been met, thus no Certificate will be issued at this time.

Report: 77 Hagen Rd – Concetta Dario - addition on piers in floodplain. Contractor asked for building permit to enlarge deck. I asked for closure on previous OOC – request for COC. As-built plan for original construction of deck inadequate (not a topo, sonotubes for deck not shown), and owner so informed. Contractor then contacted me and said he intended to cantilever the deck. Owner has indicated she will not pursue a COC.

Announcements & General Business:

July 26, 2007 Meeting Minutes for approval – approved with minor changes.

Alan Green has submitted his letter of resignation to the Mayor.

CC elections- current Chair: Ira Wallach

Motion by R. Matthews to re-elect all members holding office and seconded by N. Richardson. **Vote:** All approved. **Motion carried.**

2008 Meeting Schedule – this schedule was circulated by email and has been submitted to the mayor's office for room reservation. Commission approved.

[Re]Appointment of delegate to Farm Commission (currently J. Hepburn)

Motion by R. Matthews to re-elect all members holding office and seconded by N. Richardson. **Vote:** All approved. **Motion carried.**

Commission requests staff send memo to law department to inquire into

Ongoing

Dolan Pond C.A. invasive vegetation project

Non-criminal ticketing

Boundary Trespass: 0 Carlisle Street status

Pending enforcement actions: Crystal lake condos - update

Anne Phelps, Sr. Environmental Planner